STATE OF MICHIGAN

IN THE SUPREME COURT

BRONSON METHODIST HOSPITAL,
a Michigan non-profit corporation,

Plaintiff/Appellee,

v.

MICHIGAN ASSIGNED CLAIMS FACILITY,

Defendant/Appellant.

/

Supreme Court No. _____

Court Of Appeals Case No. 317864 and 317866

Kalamazoo County Circuit Court No. 12-0600-NF

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DEFENDANT-APPELLANT MICHIGAN ASSIGNED CLAIMS PLAN'S APPLICATION FOR LEAVE TO APPEAL OR, IN THE ALTERNATIVE, FOR PEREMPTORY REVERSAL

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STATEMENT IDENTIFYING ORDER APPEALED FROM AND RELIEF SOUGHT

On February 19, 2015, the Court of Appeals reversed the Kalamazoo Circuit Court's (the "Circuit Court") grant of summary disposition in favor of the Michigan Assigned Claims Facility.[1] (The Court of Appeals' February 19, 2015 Order is attached as Exhibit A). In so doing, the Court of Appeals incorrectly interpreted the applicable statutory language and erroneously shifted the burden of investigating insurance coverage onto the Michigan Assigned Claims Plan ("MACP") when the claim at issue was clearly ineligible for benefits under the MACP. This Application for Leave to Appeal is filed on April 2, 2015, which is timely submitted pursuant to MCR 7.302(C)(2).

For the reasons stated herein, Appellant MACP requests that this Court grant MACP's application for leave to appeal and reverse the Court of Appeals' decision. In the alternative, this Court should peremptorily reverse the decision of the Court of Appeals and instruct the trial court to enter judgment in the MACP's favor.

[1] The Michigan Assigned Claims Facility ("ACF") is no longer in existence. As explained herein, the ACF was statutorily eliminated pursuant to amendments to MCL 500.3171 of the Michigan Automobile No-Fault Act, MCL 500.3101 *et seq.* ("No-Fault Act"). The operations of the ACF were transferred from the Secretary of State to the Michigan Automobile Insurance Placement Facility, which now administers the Michigan Assigned Claims Plan ("MACP"). The MACP conveyed this fact to the Plaintiff and asked the Plaintiff to stipulate to a substitution of parties. The Plaintiff refused to do so; however, because the MACP is the correct name of the entity involved in this case (as recognized by the Circuit Court (see Exhibit G, p 21)), references to the MACP are intended to refer to the Defendant-Appellant in this case.

SUFFICIENT GROUNDS EXIST TO WARRANT GRANTING THE APPLICATION FOR LEAVE TO APPEAL

The MACP submits this Court should grant leave to appeal based on MCR 7.302(B)(3) and (5). At the heart of this case is the proper interpretation of the MACP's role in investigating and assigning insurance claims, specifically MCL 500.3172, 500.3173 and 500.3173a. Section 3173a provides that the MACP "shall make an initial determination of a claimant's eligibility for benefits under the assigned claims plan and shall deny an obviously ineligible claim." Section 3173 provides that if a claimant is ineligible for PIP benefits because of a limitation or exclusion in sections 3105 to 3116 of the No-Fault Act, then the claimant is also ineligible for benefits under the MACP. If a claim is obviously ineligible, the MACP's responsibility with respect to that claim ends with the MACP's determination. Section 3172(1) makes clear that only a person "entitled" to claim may obtain benefits under the MACP in limited circumstances. Reading all of these interconnected provisions together, it is clear that if the MACP makes an initial determination that a claimant is obviously ineligible for benefits under the MACP then there is no need to determine if the claimant is otherwise eligible to benefits under Section 3172(1).

The decision of the Court of Appeals presents an issue of great significance to the MACP and, in turn, the driving public who ultimately bears the cost of providing benefits to uninsured claimants in an auto accident under certain defined conditions. The MACP and its servicing carriers are named in many lawsuits each year, in which claimants seek the payment of benefits that either the MACP or a servicing carrier have determined are not reimbursable.[2] It would provide great assistance to the lower courts to have this Court definitively address the

[2] In assessment year 2013, the MACP received over 3,000 claims and over $30 million was paid to servicing insurers for claims adjustment services. See Michigan Assigned Claims Plan website, http://www.michacp.org/documents/Invoice-AssessmentYR2014-BillingYR2013.pdf.

circumstances pursuant to which the MACP is required to assign a servicing carrier when the MACP has made the determination that there is no set of circumstances where a particular claimant will become eligible for benefits. The Court of Appeals' decision in this case shifts the usual burden of proving eligibility to receive no-fault benefits to the MACP, rather than keeping that burden on the claimant who seeks payments from the MACP. As such, it presents an issue of jurisprudential significance to the lower courts of this State as well as the driving public.

Review is also appropriate because the Court of Appeals' decision is clearly erroneous. The decision effectively eliminates the MACP's statutory right to make an initial determination that a claim is obviously ineligible. Instead, the decision shifts the burden to the MACP to investigate claims even when it is evident that there are no circumstances pursuant to which a person would be eligible for benefits under the MACP. Not only does this result eviscerate the MACP's statutory rights, it also makes the MACP a dumping ground for any claims involving a motor vehicle for which a provider cannot readily find a place to file its claim. Leave should be granted pursuant to MCR 7.302(B)(5) to correct this error and eliminate the material injustice thereby caused. The decision is so clearly flawed and inconsistent with the plain language of MCL 500.3172, 500.3173 and 500.3173a as well as the relevant case law, this Court should correct the consequences created thereby.

STATEMENT OF QUESTION PRESENTED FOR REVIEW

I. SHOULD THIS COURT GRANT LEAVE AND REVERSE THE COURT OF APPEALS' ORDER THAT REVERSED THE CIRCUIT COURT'S GRANT OF SUMMARY DISPOSITION IN FAVOR OF THE MACP WHEN THE MACP DETERMINED, IN ACCORDANCE WITH MCL 500.3173 AND MCL 500.3173A THAT THE PERSON AT ISSUE WAS INELIGIBLE FOR BENEFITS UNDER THE MACP AND GRANT OF SANCTIONS AGAINST BRONSON METHODIST HOSPITAL FOR BRINGING A FRIVOLOUS CLAIM?

Plaintiff-Appellee probably answers: No.

Defendant-Appellant answers: Yes.

The Court of Appeals answer: No.

This Court should answer: Yes.

SUMMARY OF ARGUMENT

The Michigan Assigned Claims Plan ("MACP") was created to be an insurer of last priority in limited circumstances in order to provide assistance to people injured in motor vehicle accidents when there is no insurance available to cover that person. The Court of Appeals' decision in this case, however, expands the legislatively dictated obligations of the MACP, contrary to the relevant statutory provisions, by essentially making the MACP the collection agency for health care providers who fail to obtain information from their patients regarding the existence of applicable auto insurance (or lack thereof). The result is even more inappropriate in this case, where there are only two possible outcomes of such an investigation—both of which render the injured party ineligible for benefits under the MACP. MCL 500.3173 and MCL 500.3173a dictate that the MACP must deny a claim that is obviously ineligible. The Court of Appeals, however, erroneously ignored the statutes' plain language and the clear and undisputed facts in this case to hold otherwise. For the reasons stated herein, this Court should grant the MACP's Application for Leave and reverse the Court of Appeals' decision.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

I. THE MICHIGAN ASSIGNED CLAIMS PLAN

The State of Michigan established the Michigan Assigned Claims program in 1973 to provide assistance to people injured in an accident involving a motor vehicle, when there is no automobile insurance available. MCL 500.3171. The Secretary of State managed the Assigned Claims program until December 17, 2012, when the Legislature transferred responsibility for the program to the Michigan Automobile Insurance Placement Facility ("MAIPF"). The MAIPF is composed of insurers authorized to write automobile insurance in Michigan and acts as the administrator of what was previously known as the Assigned Claims Facility ("ACF"), now

known as the Assigned Claims Plan ("MACP").[3] In this role, the MAIPF/MACP is responsible for medical claims filed by no-fault claimants who are injured in an automobile accident when there is no insurance company responsible for the payment of no-fault benefits under the statutory scheme established by Michigan's No-Fault Act. This lack of coverage can be because there is no insured driver involved in the accident, or it may be because the insurer has a financial inability to pay.

Michigan's No-Fault Act allows individuals who are injured in automobile accidents to obtain personal protection insurance ("PIP") benefits without regard to fault. MCL 500.3105. If insurance benefits are not available through an insurer of someone involved in the accident, the injured individual may apply to the MACP for benefits. MCL 500.3172. To trigger eligibility for assigned claim benefits, the injured individual must meet certain criteria. First, the person must not be ineligible for PIP benefits because of a limitation or exclusion in sections 3105 to 3116 of the No-Fault Act. MCL 500.3173; MCL 500.3173a. If the person is ineligible under such provisions, then the claimant is also ineligible for benefits under the MACP. *Id.* Second, if the person is not otherwise ineligible under MCL 500.3173 or MCL 500.3173a, then the injured individual must meet at least one out of four statutory conditions: (1) no PIP insurance is applicable to the individual's injury; (2) no PIP insurance can be identified; (3) two or more insurers are disputing their obligations to provide coverage; or (4) the insurer responsible for the loss is insolvent. MCL 500.3172(1).

The applicable statute reads, in pertinent part, as follows:

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[3] The Court of Appeals erroneously stated that the MAIPF is a semi-governmental agency. This is not accurate. The MAIPF is not a state agency and its money is not state money. MCL 500.134(3), (6). Rather, the MAIPF is a private non-profit association formed pursuant to statute, like the other residual market associations created by statute such as the Michigan Catastrophic Claims Association, Michigan Basic Property Insurance Association, and others.

> A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In that case, unpaid benefits due or coming due may be collected under the assigned claims plan and the insurer to which the claim is assigned is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

Once an individual has applied for benefits under the assigned claims plan, the MACP makes an initial determination of eligibility. MCL 500.3173a. By statute, the MACP "**shall** deny an obviously ineligible claim." *Id.* (emphasis added). Once an initial determination of eligibility is made, the MACP assigns the claim to a servicing insurer. *Id.* and MCL 500.3174.

In other words, after an individual applies for benefits under the MACP, the MACP's first inquiry is whether or not the claimant is initially eligible. This threshold question must be answered before the claim is assigned. If the claimant is obviously ineligible, then the MACP's obligation to assign the claim or further process a claim is terminated.

II. THE CURRENT DISPUTE

On or about July 6, 2012, Cody Esquivel was the intoxicated owner and operator of a 2002 Jeep motor vehicle, Michigan Registration No. CKK-9113, VIN 1JLIGWLI8NO2C249964 (Exhibit B, title), which was involved in a single motor vehicle accident in Allegan County, at 58th Street, at or near 128th Street. Pursuant to the police report, Mr. Esquivel was the driver of the Jeep, who sustained injury after the vehicle rolled over,

during which he struck a large boulder at the end of a private driveway. (Exhibit C, police report). Although not confirmed, there is strong suspicion that the accident was the result of a suicide attempt.[4] (Exhibits C & D). Mr. Esquivel was transported from the scene to Bronson Methodist Hospital.

Although Bronson made statements to the Court of Appeals with respect to Mr. Esquivel's level of consciousness and their inability to communicate with him, medical records indicate that Bronson personnel were able to communicate with Mr. Esquivel during his short stay at Bronson. (Exhibit D). The hospital records also indicate that Mr. Esquivel's parents came to the hospital, and that the hospital had access to communicate with them. (Exhibit D, Bronson Methodist medical records). The accident was reported as a low speed crash, and contrary to representations made by Bronson, any difficulties in initially communicating with Mr. Esquivel appear to be related more so to his intoxicated state, rather than his injuries. Upon arrival, his level of alcohol intoxication was listed as a .14 (nearly twice the legal limit). (Exhibit D, Bronson medical records.)

In fact, Bronson medical records indicate that on the date of the accident, Mr. Esquivel was extubated and was able to communicate with hospital personnel. On examination he was noted to be alert and well appearing, not in distress. His ultimate diagnosis was a transverse right fifth metacarpal (finger) fracture with no displacement. (Exhibit D, Bronson medical

[4] Mr. Esquivel's prior girlfriend, Brittany DePalma, advised Michigan State Police Officer Carlos Fossati that Mr. Esquivel had threatened to kill himself and then drove out of her driveway at a high rate of speed. Although not confirmed, if Mr. Esquivel had been injured during a suicide attempt, he would not be eligible for benefits under the MACP because such injuries would not be the result of an accident. MCL 500.3172(1) ("A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury . . .") (emphasis added).

records). There is no reason why a finger fracture would prevent Bronson from obtaining information from Mr. Esquivel. Indeed, Mr. Esquivel was discharged from Bronson within 24 hours of his admission.

Despite having Mr. Esquivel in its hospital, and the ability to communicate with him, Bronson claims that it did not obtain any information regarding his insurance. Bronson learned that Mr. Esquivel was the titleholder and a constructive (a/k/a statutory owner) of the accident vehicle, as the Application for Benefits (the "Application") filed with the MACP indicates that Mr. Esquivel had use of the involved vehicle for more than 30 days prior to the accident. (Exhibit E, Application for Benefits). The Application also has numerous other answers, from the perspective of Mr. Esquivel, and indicates that Mr. Esquivel was the owner and operator of the involved vehicle. Indeed, there is no denying, and no dispute in this matter that Mr. Esquivel was the titleholder to the involved 2002 Jeep vehicle (Exhibit E, Application for Benefits; Exhibit B, title).

Upon receipt of the Application, the claim was reviewed, and ultimately denied, by the Assigned Claims Facility, currently known as the MACP. (Exhibit F, denial). The claim was denied because "the owner or co-owner of an uninsured motor vehicle or motorcycle involved in an accident is not eligible for benefits." (Exhibit F).

Following the denial, Bronson filed a lawsuit against the ACF. In response, the MACP filed a Motion for Summary Disposition, which motion was considered during oral argument on or about May 6, 2013. On that date, the Honorable Gary Giguere granted the MACP's Motion for Summary Disposition. (Exhibit G).

Thereafter, the MACP filed a Motion for Entry of Judgment and Post-Judgment Attorney Fees and Costs, which was heard by the 9th Circuit Court on July 15, 2013. On that

same date, an Order Granting Defendant's Motion for Entry of Judgment and Motion for Post-Judgment Attorney Fees and Costs was granted (Exhibit H, Order Granting Defendant's Motion for Entry of Judgment and Motion for Post-Judgment Attorney Fees). Bronson subsequently filed a Motion for Reconsideration, which was denied by the Circuit Court for the reason that the motion simply was a rehearing of the arguments previously presented. (Exhibit I, Order Denying Motion for Reconsideration).

On August 23, 2013, Bronson filed a claim of appeal with the Court of Appeals. Both parties filed briefs and, on February 19, 2015, the Court of Appeals issued its order reversing the Circuit Court's grant of summary disposition in favor of the MACP. In so holding, the Court of Appeals acknowledged that an injured party "who because of a limitation or exclusion in [MCL 500.3105 to MCL 500.3116] is disqualified from receiving [PIP] benefits" is also disqualified from receiving benefits under the MACP. (Exhibit A ("Order"), p 7, citing MCL 500.3173). The Court of Appeals also noted that the MACP correctly posited that if Mr. Esquivel or a family member in his household maintained no-fault insurance at the time of the accident, that insurer would take priority under MCL 500.3114(1). (Order, pp 7-8). The Court of Appeals found, however, that it was "not clear on this undeveloped record…that one of these scenarios exist. Esquivel's insurance status remains unknown. When he is deposed, the material fact missing from the no-fault equation will emerge." (Order, p 8). The Court of Appeals found that none of the evidence proffered by the MACP (i.e., the Michigan State Police accident report, the fire department incident report, and the application for benefits) or the hospital records "establish[ed] that Esquivel was actually uninsured" and that "no applicable insurance has been identified, despite Bronson's efforts." (Order, p 8). For these reasons, the Court found as follows:

> Thus, at this juncture, Bronson's claims fall squarely within that portion of MCL 500.3172(1) addressing claims for which "no personal protection insurance applicable to the injury can be identified." The existence of a central material fact question—whether or not Esquivel had insurance at the time of the accident—precluded summary disposition, and the circuit court erred in granting the MACP's motion and request for sanctions.

(Order, p 8). The Court vacated and remanded to the Circuit Court for further proceedings. (Order, p 9).

Defendant-Appellant MACP timely filed the instant application for leave to appeal the Court of Appeals' decision and, for the reasons stated herein, respectfully requests that this Court grant leave and reverse the Court of Appeals' erroneous order, or alternatively, peremptorily reverse.

ARGUMENT

I. STANDARD OF REVIEW

Whether to grant leave to appeal is within this Court's discretion. Should the Court grant leave, this Court reviews a grant of summary disposition *de novo*. See, e.g., *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995); *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426-427; 633 NW2d 408 (2001). Under MCR 2.116(C)(8), dismissal is proper when a complaint "fail[s] to state a claim on which relief can be granted." When deciding such a motion, the court is tasked with "test[ing] the legal sufficiency of the complaint[.]" *Wade v Dep't of Corrs*, 439 Mich 158, 162; 483 NW2d 26 (1992). An MCR 2.116(C)(8) motion should be granted when "the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. In other words, assuming all of the facts alleged in the complaint are true, do they state a cognizable claim? As set forth below, Plaintiff failed to state a claim that is enforceable as a matter of law and the MACP was entitled to summary disposition.

Even if the Court looked beyond the Complaint, however, summary disposition was still have been appropriate under MCR 2.116(C)(10).[5] Under this standard, the moving party is entitled to judgment as a matter of law if the evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); see, e.g., *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 85; 514 NW2d 185 (1994).

This Court also reviews *de novo* underlying issues of statutory interpretation. *Stanton v City of Battle Creek*, 466 Mich 611, 614; 647 NW2d 508 (2002). And finally, "[a] trial court's finding that a claim is frivolous is reviewed for clear error." *Schroder v Terra Energy Ltd*, 223 Mich App 176, 195; 565 NW2d 887 (1997).

II. THE COURT OF APPEALS ORDER INCORRECTLY INTERPRETED THE RELEVANT STATUTORY LANGUAGE AND ERRONEOUSLY SHIFTED THE BURDEN OF INVESTIGATION TO THE MACP.

The Court of Appeals incorrectly concluded that because Mr. Esquivel's exact insurance status was unknown that "Bronson's claims fall squarely within that portion of MCL 500.3172(1) addressing claims for which 'no personal protection insurance applicable to the injury can be identified.'" (Order, p 8). Allowing the Court of Appeals' decision to stand will be contrary to the plain language of the relevant statutes and will erroneously shift the burden of investigation to the MACP.

A. The Court of Appeals Incorrectly Interpreted the Relevant Statutory Language.

The primary rule of statutory construction is to "determine and effectuate the intent of the Legislature through reasonable construction in consideration of the purpose of the statute and the

[5] Although the Court of Appeals found that the Circuit Court considered evidence beyond the pleadings and thereby granted the MACP's motion under (C)(10) (see Order, p 6), the Circuit Court did not state the rule under which it granted the MACP's motion. (Exhibit G, pp 23-27).

object sought to be accomplished." *Frankenmuth Mut Ins Co v Marlette Homes*, 456 Mich 511, 515; 573 NW2d 611 (1998). "Where a statute is clear and unambiguous, judicial construction is precluded. If judicial interpretation is necessary, the Legislature's intent must be gathered from the language used, and the language must be given its ordinary meaning. In determining legislative intent, statutory language is given the reasonable construction that best accomplishes the purpose of the statute." *Id.*

Thus, as with all questions of statutory interpretation, a court must begin its analysis with the plain language of the statute. *Ameritech Mich v PSC (In re MCI)*, 460 Mich 396, 411; 596 NW2d 164 (1999). There are three statutes that are directly implicated by this case and the Court of Appeals' erroneous order. First, MCL 500.3173a(1) provides as follows:

> The Michigan automobile insurance placement facility **shall make an initial determination of a claimant's eligibility** for benefits under the assigned claims plan **and shall deny an obviously ineligible claim**. The claimant shall be notified promptly in writing of the denial and the reasons for the denial.

(Emphasis added).

Second, MCL 500.3173 reads:

> A person who because of a limitation or exclusion in sections 3105 to 3116 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury **is also disqualified from receiving benefits under the assigned claims plan**.

(Emphasis added).

And, finally, MCL 500.3172(1) provides:

> A person **entitled** to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury, **no personal protection insurance applicable to the injury can be identified,** the personal protection insurance applicable to the

> injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In that case, unpaid benefits due or coming due may be collected under the assigned claims plan and the insurer to which the claim is assigned is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

(Emphasis added). Because these statutory provisions all relate to the same subject matter, they must be read together in order to understand the Legislature's intent. *Ameritech Mich. v PSC (In re MCI)*, 460 Mich at 412 ("In general, where statutes relate to the same subject matter, they should be read, construed, and applied together to distill the Legislature's intent.").

Under the Court of Appeals' order, any time the insurance status of an injured person cannot be readily "identified" by a health care provider, that person may obtain PIP benefits through the MACP. Even when, as in this case, there is no possible scenario under which the MACP would be responsible for such benefits. The Court of Appeals' decision erroneously interprets MCL 500.3172(1) by ignoring MCL 500.3173 and MCL 500.3173a.

After an application for benefits is filed with the MACP, the first and threshold question—as dictated by statute—for the MACP is whether the claimant is obviously ineligible for benefits under the MACP. MCL 500.3173a (the MACP "**shall** make **an initial determination** of a claimant's eligibility."). If the claimant is obviously ineligible, then the MACP must deny the claim. *Id.* Although the statute does not define "obviously ineligible," the term itself is rather self-explanatory. Both Merriam-Webster's Dictionary and MCL 500.3173 help to further define the term. Merriam-Webster's Dictionary, in relevant part, defines "obvious" as "easily discovered, seen or understood" and "eligible" as "qualified to participate". Under MCL 500.3173, if a claimant is ineligible for PIP benefits because of a limitation or

exclusion in sections 3105 to 3116 of the No-Fault Act, then the claimant is also ineligible for benefits under the MACP. Thus, if it easily discovered, seen or understood that a claimant is not qualified to receive benefits under the MACP or otherwise not qualified for benefits because of an exclusion or limitation in the No-Fault Act, then the MACP must deny the claim.

In this case, the material facts necessary to determine eligibility are clear and unambiguous. It is indisputable that Mr. Esquivel was the owner and operator of the motor vehicle involved in the accident, which was titled and registered in Michigan. (Exhibit B). Mr. Esquivel was the only person involved in the accident and his vehicle was the only vehicle involved in the accident. There are only two possible insurance scenarios in this case (which even Plaintiff's counsel has recognized). (Exhibit J). The first possible scenario is that Mr. Esquivel or a family member in his household maintained no-fault insurance at the time of the accident. If true, then that insurer would take priority and Mr. Esquivel would not be entitled to benefits under the MACP. MCL 500.3114(1); Order, p 8. The only other possible scenario here is that Mr. Esquivel was actually uninsured. If Mr. Esquivel was indeed uninsured, then he is not entitled to benefits under the MACP. MCL 500.3113(b); *Botsford General Hosp v Citizens Ins Co*, 195 Mich App 127, 129; 489 NW2d 137 (1992) ("Under Michigan law, the owner of an uninsured motor vehicle in an accident is ineligible for no-fault benefits, including benefits through the assigned claims plan."). Under either scenario, Mr. Esquivel is not entitled to benefits under the MACP, which is precisely why the MACP denied the claim as required by MCL 500.3173a. Yet, the Court of Appeals' decision requires the MACP to expend resources to conclusively determine under which scenario Mr. Esquivel should be denied or simply assign the claim and force the servicing insurer to expend unnecessary resources to prove the basis of the lack of eligibility. There is no statutory basis for the Court to conclude that the Legislature

intended to make the MACP some sort of detective agency, charged with hunting for possible sources of insurance when the claimant has not presented a case in which benefits would ever be payable.

If a claimant is ineligible to receive benefits under MCL 500.3173 and MCL 500.3173a, then there is no reason for the MACP (or this Court) to analyze whether the injured party meets the further criteria under MCL 500.3172. As the Circuit Court correctly understood, MCL 500.3172(1) sets forth the circumstances under which a person may receive or obtain benefits under the MACP, not when the MACP must accept a claim. (Exhibit G, p 26).

The Legislature's use of the word "entitled" in the first sentence of Section 3172(1) provision supports such a conclusion. A person that is otherwise ineligible for benefits from the MACP (e.g., an uninsured owner who is injured in a car accident) is not "entitled" to obtain PIP benefits and is not "entitled" to PIP benefits through the MACP regardless of whether he or she satisfies one of the four criteria listed in section 3172(1). Thus, MCL 500.3172(1) itself recognizes that one must have the proper grounds for seeking or claiming benefits before he or she may obtain PIP benefits through the MACP. Reading MCL 500.3172(1), 3173, and 3173a together, in accordance with principles of statutory interpretation, makes clear that the MACP must make an initial determination of a claimant's eligibility (which, in turn, may depend on the exclusions and limitations in the No-Fault Act as well as the criteria listed in MCL 500.3172(1)). If the claimant is obviously ineligible, then the MACP must deny the claim. If not, then the MACP would assign the claim to a servicing insurer.

The language included in MCL 500.3172(1) that the Court of Appeals relied upon was clearly not intended to apply to circumstances such as those in this case. A person entitled to benefits under the MACP (assuming not otherwise ineligible under the No-Fault Act) must meet

one of four possible criteria—one of which is when "no personal protection insurance applicable to the injury can be identified." MCL 500.3172(1). This language was clearly intended to apply in circumstances like a "hit and run" accident where the identity of the vehicle (and any applicable insurer) is unknown and cannot be identified.[6] It was not intended to cover a situation where the injured person is the owner/operator of the only vehicle involved in the accident and the hospital simply fails to obtain the proper insurance information from its patient. In fact, the facts of *Spencer v Citizens Ins Co*, 239 Mich App 291; 608 NW2d 113 (2000), which Bronson relied on before the Court of Appeals, highlights the different circumstances of this case. *Spencer* involved a victim of a hit-and-run accident where the injured party was not otherwise covered by a no fault policy. 239 Mich App at 294-95. When the injured person could not identify the owner or the driver of the vehicle, he filed an application for benefits with the ACF. *Id.* *Spencer* was essentially a priority dispute case, which presents facts very different from this case, but it nicely highlights a case involving a claim that was not obviously ineligible for benefits.[7]

The Court of Appeals' decision, however, requires the MACP to either (1) expend its resources (which do not exist) to conclusively answer an irrelevant question (i.e., if Mr. Esquivel

[6] Such circumstances make clear why the Legislature provided that benefits may be given when (1) no insurance is applicable to an injury and (2) no insurance applicable to the injury can be identified. MCL 500.3172(1). An injury may fall under the former category if, for example, a pedestrian not otherwise covered by a no fault policy is hit by an uninsured motorist (there is no insurance to apply to the injury); while an injury may fall under the latter category if, for example, a pedestrian not otherwise covered by a no fault policy is hit in a "hit-and-run" where the vehicle is not identified (there is no way to identify the applicable insurance).

[7] The meaning of MCL 500.3172 and its interplay with MCL 500.3173 and MCL 500.3173a was not examined in *Spencer*. It also was not addressed in *Spectrum Health v Grahl*, 270 Mich App 248; 715 NW2d 357 (2006) (holding that MCL 500.3172(3) did not apply in a case where the operator of a vehicle involved in an accident could not identify any insurance applicable to the injury). Another distinction here is that the claimant is not the injured party himself, but the health care provider.

was in fact uninsured at the time of the accident) or (2) assign a claim where the claimant is clearly the owner/operator of a vehicle that is either (a) uninsured (and therefore ineligible for benefits under MCL 500.3113) or (b) insured (and therefore ineligible because his insurer should pay benefits) simply because the insurance status of the injured person has not been identified by its healthcare provider. Such a result flies in the face of the statutory language of MCL 500.3173 and MCL 500.3173a and reason. Indeed, under the Court of Appeals' decision, the MACP cannot make an initial determination as to a claimant's eligibility without deposing the injured person to see whether or not he or she was insured. (Order, p 8).

Placing such a burden on the MACP is akin to making a no-fault insurer bear the burden of proof with respect to a claim for no-fault benefits submitted by a claimant. This is clearly not the law of Michigan. Even when a claimant has an insurance policy with a particular insurer, that claimant still bears the burden of proof to establish that the claimant is eligible to receive each and every benefit provided by statute. For example, in *Nasser v Auto Club Ins Ass'n,* 435 Mich 33; 457 NW2d 637 (1990), the Supreme Court emphatically rejected placing the burden of proof in a claim for no-fault benefits on the insurer rather than the claimant. This Court stated:

> Under this statutory scheme, an insurer is not liable for any medical expense to the extent that it is not a reasonable charge for a particular product or service, or if the product or service itself is not reasonably necessary. The plain and unambiguous language of § 3107 makes both reasonableness and necessary explicit and necessary elements of a claimant's recovery, and thus renders their absence a defense to the insurer's liability. In addition, the burden of proof on these issues lies with the plaintiff.

Nasser, 435 Mich at 49 (emphasis added).

Plaintiff here has no less of a burden just because it is filing the claim with the MACP rather than with an insurance company. A no-fault claimant cannot just show up at the door of an insurance company and state that he or she has been injured in an auto accident and submit

bills to be paid. *Nasser, supra*, 435 Mich at 48-49. Given that an ordinary no-fault claimant has the burden to show that they are eligible to receive benefits, and that each and every expense is reasonable and necessary, it makes no sense to eliminate these critical burdens when the claim lands in the MACP because the healthcare provider does not have another home for it.

B. The Court of Appeals Order Imposes Additional Duties on the MACP Beyond Those Imposed by the Legislature.

The Court of Appeals' decision imposes obligations on the MACP far beyond those mandated by the Legislature and are contrary to the plain language of the statutory scheme in place. The reality of the situation is simple: Bronson did not obtain the information necessary from Mr. Esquivel for it to receive payment for Mr. Esquivel's injuries. Rather than obtain the information from Mr. Esquivel himself (or his parents), Bronson filed an application with the MACP in hopes that a servicing insurer would pay benefits from which Bronson could benefit, skipping over the prerequisite of showing eligibility to receive such benefits.

Bronson argued to the Court of Appeals that the "MACP is not tasked with investigating claims for assignment and Bronson has not taken the position that it is." (Exhibit K, Reply Brief, p 9). Bronson even admitted that "[n]othing in the no fault act requires the MACP to do so." (*Id.*). Yet, according to Bronson, the MACP must ignore the reality of the facts of a scenario such as those presented by this case and assign the claim to a servicing insurer who has the responsibility to investigate the claims and make determinations under the No-Fault Act. (*Id.*). Assuming Bronson's inconsistent positions are to be credited, then the MACP must engage in a series of investigative actions to determine eligibility, and if there is no proof of such eligibility, refer the claim to a servicing carrier to once again perform the same dead end investigation, all because the claimant is currently unable to make a prima facia showing that it has an eligible claim that it is presenting for payment.

This conclusion is absurd and violates well-established principles of statutory interpretation by rendering MCL 500.3173 without any meaning.[8] Section 3173a was added in 1984 in order to ensure that the ACF (now, MACP) would "be empowered to make an initial determination of a claimant's eligibility for benefits and to deny claims that were obviously ineligible without passing them onto a participating insurer." (Exhibit L, House Legislative Analysis for House Bill 4233 Substitute H-1 (Nov 14, 1984)). As noted by the House Legislative Analysis section, prior to the enactment of PA 426 of 1984, the ACF was not able to deny a claim that was obviously ineligible and was required to pass them on to a servicing insurer which could deny it "after duplicating the [ACF's] determination of eligibility." (Exhibit L); see also *Jackson v Sec of State*, 105 Mich App 132; 306 NW2d 422 (1981) (holding that the Secretary of State lacked the authority to promulgate administrative rules allowing the Secretary to deny an obviously ineligible claim before the Legislature enacted MCL 500.3173a). By accepting Bronson's argument, the Court of Appeals has rendered MCL 500.3173a surplusage, contrary to the plain language of the statute and the Legislature's clear intent.

Mr. Esquivel was the owner and operator of the motor vehicle in question. (Exhibit B, title and C, police report). Mr. Esquivel's vehicle was the only vehicle involved in the accident. (Exhibit C). Mr. Esquivel is the only injured person at issue in this case. Thus, there is only one person (including his household) and one vehicle to look to for insurance information. There is no unknown "hit-and-run" driver that could provide insurance. Indeed, in *Spencer*, had the injured party been otherwise covered by a no fault policy, he would not have been entitled to benefits under the MACP either. Here, we know that either (1) Mr. Esquivel was legally driving

[8] *See e.g., Daimler Chrysler Corp v State Tax Comm'n*, 482 Mich 220; 753 NW2d 605, 612, n. 2 (2008), citing *Grimes v Dep't of Transportation*, 475 Mich 72, 89; 715 NW2d 275 (2006).

the vehicle (which he owned) with the requisite insurance, in which case, that insurer would have priority or (2) Mr. Esquivel was illegally driving the vehicle without insurance, in which case he would be ineligible for benefits under the MACP. The MACP correctly determined that Bronson's claim was obviously ineligible for benefits under the MACP and denied the claim, as it is permitted by statute to do.[9]

There is nothing in the No-Fault Act that supports the Court of Appeals' conclusion that any health provider that fails to obtain insurance information (and superficially seeks out such information) may file a claim with the MACP, and the MACP must either perform its own investigation into the claim at its own cost or assign a claim that is obviously ineligible for benefits, which would be contrary to MCL 500.3173a.[10] The Court of Appeals' order evades the purpose and language of the MACP statutes.

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[9] Bronson attempts to argue that it could not obtain Mr. Esquivel's insurance information from Mr. Esquivel himself because he was air lifted to the hospital and intubated at the time of his registration (therefore unable to communicate with Bronson's registration personnel). (Exhibit M, Brief on Appeal, p 3). Although Mr. Esquivel's injuries proved not be very serious at all (fractured finger) and his release was the same day as admission, Bronson evidently made no additional attempts (after his initial registration) to obtain any insurance information from Mr. Esquivel while he was still in Bronson's care. Bronson's "attempts" to obtain Mr. Esquivel's insurance information after his discharge included submitting a Freedom of Information Act request to the Michigan Department of State Police for the accident report/police report, mailing two letters to Mr. Esquivel's last known address, and running an Accurint report (and attempting to call Mr. Esquivel at the listed number). (*Id.* at 3-5). Hardly a thorough investigation, Bronson looked to find the easiest avenue to obtain compensation for the various tests and procedures performed on Mr. Esquivel and dumped its investigatory responsibility on the MACP. Indeed, the Court of Appeals' order can read to place a health care provider in a more advantageous position than an injured person. A provider's right to financial recovery is still derivative of the injured person (i.e., the provider stands in the shoes of the injured person). Nowhere in Michigan law is the provider relieved of its burden to demonstrate the injured person's eligibility. *Moody v Home Owners Ins Co*, 304 Mich App 415, 441; 849 NW2d 31 (2014).

[10] In Bronson's view, the MACP must assign a claim such as this one simply because the health care provider could not "identify" the injured party's insurer. There are several logic missteps in reaching such a conclusion. First, it essentially ignores MCL 500.3173a and the MACP's role in performing an initial determination of eligibility. Second, it improperly shifts

III. SUMMARY DISPOSITION WAS APPROPRIATE BECAUSE NO FURTHER FACTUAL DEVELOPMENT WOULD SUPPORT PLAINTIFF'S POSITION.

The Court of Appeals reversed the Circuit Court's decision because it found that there was insufficient evidence to sustain summary disposition—more specifically, that summary disposition was inappropriate because whether Mr. Esquivel had insurance at the time of the accident was a material question of fact unanswered. (Order, p 8). Even though the MACP filed its motion for summary disposition before the conclusion of discovery in this case, Michigan courts have recognized that summary disposition is still appropriate where further discovery does not stand a fair chance of uncovering factual support for the opposing party's position. *Mowery v Crittenton Hosp,* 155 Mich App 711, 716; 400 NW2d 633 (1986). This case presents just such a scenario.

No amount of discovery will change the language of the statutes in this case. If MACP is required to depose Mr. Esquivel in this case, there are only two answers he could give to the so-called "central material fact question"—whether he had insurance at the time of the accident. (Order, p 8). Either he answers "yes", in which case that insurer would be responsible for paying benefits (making Mr. Esquivel ineligible for benefits under the MACP) or he answers "no," in which case he is ineligible for benefits under MCL 500.3113 and MCL 500.3173. Either way, the MACP is forced to expend resources to prove an ultimately meaningless answer that does not change the ultimate decision in this case—Mr. Esquivel is ineligible for benefits under the MACP.[11] Summary disposition was appropriate in this case, and the Court of Appeals clearly erred in reversing the Circuit Court's order.

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the burden of investigation either to the MACP or to the servicing insurer rather than the proper party—the plaintiff.

[11] And taking the Court of Appeals' decision outside of this particular case, any time a health care provider failed to obtain an injured party's insurance information, that health care

IV. THE CIRCUIT COURT'S FINDING THAT BRONSON'S CLAIM WAS FRIVOLOUS WAS NOT CLEARLY ERRONEOUS.

Plaintiff filed the instant lawsuit on November 16, 2012. As early as January 16, 2013, the MACP's counsel advised Plaintiff's counsel that the claim was frivolous, in addition to advising Plaintiff's counsel that the ACF had been statutorily dissolved and that the MACP now performed the ACF's functions through the MAIPF. (Exhibit N, Jan 16, 2013 correspondence).

Indeed, subsequent electronic mail correspondence between the parties' counsel indicate that Plaintiff was fully aware and admitted that Mr. Esquivel was the owner of the vehicle and that Plaintiff was unaware of any no-fault insurance that would apply to the loss. In fact, Plaintiff's counsel was clearly aware that there were only two possible scenarios in this case. In an email dated December 11, 2012, Mr. Hillary wrote to Mr. Froehlich in the Michigan Attorney General's office the following:

> Question 7 on the ACF Application asks whether the claimant/patient has motor vehicle insurance. We answered "unknown." We do not know and the patient has not responded to our inquiries. You are right that the 3113(b) excludes uninsured owners. But that is not the test for assignment. The ACF must assign a claim to a servicing insurer unless the claim is "obviously ineligible" (3173a), which this claims is not on the face of the application, and if "no personal protection insurance can be identified" (3172), which none can be, at least not by us. . . . Joe, **I do see your point. This guy either had NF insurance on the vehicle or he didn't. But we can't identify any at this time.**"

(Exhibit J) (emphasis added).

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provider could apply to the MACP for benefits under the façade that no PIP insurance has been identified and either force the MACP to conduct its own investigation into whether the injured party has insurance or assign the case to a servicing insurer even though the claim could be "obviously ineligible" if the health care provider conducted its own investigation into no-fault coverage. The MACP simply does not have the resources to conduct such investigations and is not required by statute to do so.

Plaintiff's counsel was advised on several occasions as to the frivolous nature of the lawsuit, and that the MACP had no way of establishing coverage for motor vehicles. (Exhibit O, Feb 4 correspondence). Locating and identifying a responsible party is a plaintiff's duty, not that of the MACP. Plaintiff completely ignored this correspondence and never signed the suggested stipulation to substitute parties.

MCL 600.2591(1) states as follows:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> > (a) "Frivolous" means that at least 1 of the following conditions is met:
> >
> > > (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
> > >
> > > (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
> > >
> > > (iii) **The party's legal position was devoid of arguable legal merit.**
> >
> > (b) "Prevailing party" means a party who wins on the entire record.

(Emphasis added).

The MACP filed its Motion for Attorney Fees because there was no scenario under Michigan law where Plaintiff would be entitled to receive benefits from the MACP or its

servicing insurers, which Bronson's counsel appeared to recognize and yet Bronson filed suit anyway, evidently in order to have the MACP conduct its investigation. (Exhibit __). The lawsuit against the ACF (now, the MACP) was therefore without merit and was frivolous. The Circuit Court Judge agreed and granted costs and fees in accordance with MCR 2.625 and MCL 600.2591 in favor of the MACP for being required to respond to Plaintiff's frivolous action.

As explained at length above, Plaintiff's suit against the ACF is without legal merit. Filing this suit was an effort to force the MACP to conduct an investigation in the hope that insurance coverage would be discovered through the MACP's resources. The MACP, however, does not have any special resources to locate such coverage. The process is literally paying a third party investigator to pick up the telephone and call insurance companies to ask if coverage exists. Plaintiff and Plaintiff's counsel are perfectly capable of taking such action—and, in fact, the MACP suggested that they do so. (Exhibit J). There was never any possibility of obtaining benefits through the MACP in this case. Accordingly, the suit against the MACP was without merit and the award of sanctions and attorney fees were appropriate.

CONCLUSION AND REQUEST FOR RELIEF

Despite the Court of Appeals' erroneous adoption of Plaintiff's interpretation of MCL 500.3172(1), the statutory language at issue in this case is very clear. After an application for benefits is submitted to the MACP, the MACP must deny any obviously ineligible claim and has no obligation to refer such an ineligible claim to its servicing carriers to make this same determination. MCL 500.3173a. Although "obviously ineligible" is not defined in the statute, MCL 500.3173 makes it clear that a claimant is ineligible for benefits if that claimant is ineligible for PIP benefits under certain sections of the No-Fault Act, including when an uninsured owner involved in an accident. In this case, Mr. Esquivel was the undisputed owner of the only vehicle involved in the accident. As Plaintiff's counsel put it, Mr. Esquivel "either had

[no fault insurance] or didn't." If the former, it is Plaintiff's burden (not the MACP's) to diligently conduct an investigation into whether such a carrier existed and, if it did, then seek benefits from that carrier. In the latter case, Mr. Esquivel would be ineligible for benefits as an uninsured owner. Under either scenario, Mr. Esquivel is not eligible for benefits through the MACP. The fact that Bronson could not "identify" Mr. Esquivel's insurance carrier (if one existed) does not require the MACP to assign the claim. Indeed, if true, why would a health provider inquire into an injured party's insurance status, particularly if that party is likely uninsured? Under the Court of Appeals' decision, such a provider could simply pass that responsibility along to the MACP by claiming that they cannot "identify" any applicable insurance. The Court of Appeals' order essentially asks the MACP to do the impossible and prove a negative by assuming the role of investigator when that duty belongs to the Plaintiff. Such a conclusion flies in the face of the relevant statutory language and the Legislature's intent and cannot stand.

WHEREFORE, Defendant-Appellant Michigan Assigned Claims Plan respectfully requests that this Honorable Court grant its Application for Leave to Appeal and reverse the Court of Appeals' erroneous decision. In the alternative, MACP requests that this Court peremptorily reverse the decision and instruct the trial court to enter judgment in the MACP's favor.

Respectfully submitted,

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